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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Oct 14, 2020

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HUGUETTE NICOLE YOUNG,

Plaintiff,

v.

BOB FERGUSON, in his official capacity as Attorney General for the State of Washington,

Defendant.

NO: 2:20-CV-277-RMP

ORDER OF DISMISSAL WITHOUT PREJUDICE

BEFORE THE COURT is a Motion by Plaintiff Huguette Nicole Young to

“Have Magistrate Judge Removed from Case; to Have a District Judge Render an

Order on Plaintiff’s Application to Proceed In Forma Pauperis; and to Compel the

Court to Honor Rule 5.1(b).” ECF No. 10. Also before the Court is a Report and

Recommendation by United States Magistrate Judge John T. Rodgers

recommending disposition of this matter. ECF No. 11. Having reviewed the entire

docket in this matter, and the relevant law, the Court is fully informed.

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## BACKGROUND

Plaintiff filed a Complaint on August 10, 2020, claiming that the face mask order in Washington State infringes her First Amendment free speech rights and seeking to enjoin the Washington State Attorney General from enforcing the face mask order. ECF No. 1. Plaintiff did not pay the requisite filing fee; rather, Plaintiff filed an Application to Proceed In Forma Pauperis.

After reviewing Plaintiff's application, Magistrate Judge Rodgers issued an Order Denying Application to Proceed with In Forma Pauperis with Leave to Renew on August 13, 2020. ECF No. 4. That Order addressed Plaintiff's arguments that took issue with the existence of a filing fee for pro se litigants seeking to vindicate their constitutional rights and that disputed the Court's authority to request financial information to assess whether Plaintiff may proceed in forma pauperis and avoid the fee. *Id.* Magistrate Judge Rodgers gave Plaintiff thirty days to pay the filing fee or submit a properly completed application to proceed in forma pauperis. *Id.* at 3.

Rather than refile an in forma pauperis application, Plaintiff filed her “Motion to Have Magistrate Judge Removed from Case; to Have a District Judge Render an Order on Plaintiff’s Application to Proceed In Forma Pauperis; and to Compel the Court to Honor Rule 5.1(b).” ECF No. 10. Once the thirty days after the Order Denying Application to Proceed In Forma Pauperis with Leave to Renew expired, Magistrate Judge Rodgers issued a Report and Recommendation noting that Plaintiff had not filed a properly completed Application to Proceed In Forma Pauperis, and

1 recommending that, consequently, Plaintiff's Complaint be dismissed without  
2 prejudice. ECF No. 11. Plaintiff did not file an objection to the Report and  
3 Recommendation. Rather, on October 9, 2020, Plaintiff filed a First Amended  
4 Complaint and a Motion seeking a speedy hearing on her request for declaratory  
5 relief raised in her First Amended Complaint, pursuant to Fed. R. Civ. P. 57. ECF  
6 Nos. 12 (First Amended Complaint) and 13 (Motion for a Speedy Hearing under  
7 Fed. R. Civ. P. 57).

## 8 DISCUSSION

9 The Federal Magistrates Act permits district courts to assign magistrate judges  
10 certain identified duties, as well as "such additional duties as are not inconsistent  
11 with the Constitution and laws of the United States." 28 U.S.C. § 636(b)(3). In this  
12 District, United States Magistrate Judges may rule upon applications to proceed in  
13 forma pauperis. Local Magistrate Judge Rule ("LMJR") 2(a)(7). However,  
14 magistrate judges lack authority to issue dispositive orders denying a motion to  
15 proceed in forma pauperis. *See Tripati v. Rison*, 847 F.2d 548 (9th Cir. 1988).

16 Plaintiff asks this Court to render a decision on her in forma pauperis  
17 application. ECF No. 10 at 3. Plaintiff's request is not at odds with Magistrate  
18 Judge Rodgers' Report and Recommendation, which also requires the assigned  
19 Article III district judge to make the final determination regarding whether  
20 Plaintiff's action may proceed without the payment of a filing fee or compliance  
21 with the requirements for proceeding in forma pauperis. *See* ECF No. 11 at 2

1 (recommending a disposition, for this Court's consideration). Magistrate Judge  
2 Rodgers' initial Order, ECF No. 4, and subsequent Report and Recommendation, are  
3 consistent with the limitation set forth by *Tripati*, 847 F.2d 548. Moreover, to the  
4 extent that Plaintiff argues that any role for a magistrate judge in the in forma  
5 pauperis application process is unconstitutional, Plaintiff does not cite legal  
6 authority for her position, *see* ECF No. 10 at 7–11, and the Court finds no further  
7 analysis warranted.

8 It is undisputed that Plaintiff has neither paid the requisite filing fee nor  
9 submitted the requisite information to permit the Court to grant in forma pauperis  
10 status. *See* 28 U.S.C. § 1914 (filing fee a statutory prerequisite to a civil action in  
11 federal district court); 28 U.S.C. § 1915 (allowing district courts to grant leave to  
12 proceed in forma pauperis only after an individual submits an affidavit setting forth  
13 assets and an inability to pay). Therefore, dismissal without prejudice is appropriate.  
14 *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007).

15 Plaintiff also requests that this Court “honor Rule 5.1(b) of Fed. R. Civ. P. and  
16 certify to the United States Attorney General all of plaintiff’s constitutional  
17 challenges to federal statutes,” referring to the challenges to federal statutes and the  
18 United States Constitution that Plaintiff sets forth in seeking to proceed without  
19 payment of the filing fee or compliance with the in forma pauperis requirements.  
20 ECF No. 10 at 3, 10–11. However, Fed. R. Civ. P. 5.1(b) facilitates an opportunity  
21 for the United States to intervene to defend the constitutionality of a statute, and Fed.

1 R. Civ. P. 5.1(c) expands on section (b) by providing that a Court must wait for a  
2 response from the United States Attorney General before entering any final  
3 judgment holding a statute unconstitutional. Rule 5.1, Fed. R. Civ. P., does not  
4 control the situation here, where dismissal without prejudice is appropriate without  
5 proceeding further with the case because Plaintiff has failed to pay the civil filing fee  
6 or secure a waiver of the fee requirement. Plaintiff's Motion is denied with respect  
7 to certification under Fed. R. Civ. P. 5.1.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion to Have Magistrate Judge Removed from Case; to  
10 Have a District Judge Render an Order on Plaintiff's Application to Proceed In  
11 Forma Pauperis; and to Compel the Court to Honor Rule 5.1(b), **ECF No. 10**, is  
12 **DENIED**.

13 2. The Court **ADOPTS** the Report and Recommendation, **ECF No. 11**,  
14 with respect to dismissal without prejudice of Plaintiff's complaint, but declines to  
15 order Plaintiff to provide Defendant with notice of dismissal, as Defendant's counsel  
16 already entered appearances in this matter and, therefore, will receive notification  
17 automatically. *See* ECF Nos. 5 and 6.

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1       3. This action is **dismissed without prejudice**, and any remaining  
2 motions are **denied as moot**.

3           **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
4 Order, provide copies to Plaintiff and counsel, and **close this case**.

5 | DATED October 14, 2020.

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*s/ Rosanna Malouf Peterson*  
ROSANNA MALOUF PETERSON  
United States District Judge